

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

PAMELA LARSON,)	Case No. <u>19-4136</u>
)	
Plaintiff,)	
)	
vs.)	COMPLAINT
)	
MILLS AFTERMARKET)	
ACCESSORIES, INC. d/b/a RADCO)	
TRUCK ACCESSORY CENTER,)	
)	
Defendant.)	

Pamela Larson, by and through her attorneys, Lynn, Jackson, Shultz, & Lebrun, P.C., and Tracye L. Sherrill, alleges, upon personal knowledge as to herself as follows:

PRELIMINARY STATEMENT

1. Mills Aftermarket Accessories, Inc. d/b/a Radco Truck Accessory Center (“Radco”) consist of eight retail stores serving the upper Midwest, including Sioux Falls, South Dakota, providing a wide selection of truck accessories.

2. Radco operates its business from its headquarters in Brainerd, Minnesota, with its local offices in Baxter, Blaine, Burnsville, Oakdale, St. Cloud, and Duluth, Minnesota; Fargo, North Dakota and Sioux Falls, South Dakota.

3. The company depends on the Assistant Store Managers employed at each of its offices to assist customers and guest with sales assistance, wholesale orders, and are responsible for store/vendor interaction including processing orders.

4. Although the Assistant Store Managers, including Pamela Larson (“Larson”), worked in Defendant’s office subject to its control, Radco misclassified her as an exempt salaried employee, outside the protections of the federal Fair Labor Standards Act (“FLSA”) overtime regulations.

5. Larson brings this action for Radco’s failure to properly pay her overtime as a properly classified non-exempt employee subject to the FLSA.

6. Larson also brings this action to remedy violations for the unpaid overtime pursuant to the FLSA.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 in that this is a civil action arising under the FLSA.

8. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this District and Radco does business within this District.

PARTIES

Plaintiff

9. Larson is a woman who resides in Sioux Falls, South Dakota. Plaintiff is a citizen of South Dakota.

10. Larson typically worked between 40 and 55 hours per workweek for Radco's benefit.

11. Larson was not paid overtime for all of the hours she worked over 40 in a workweek.

12. Larson was not paid overtime for her hours above 40 per workweek since 2005 when she was hired.

13. Larson worked these hours pursuant to Radco's practice of encouraging and requiring her to work full-time schedules, including overtime, per workweek.

14. Larson is a covered employee within the meaning of the FLSA.

Defendant

15. Upon information and belief, Radco is a Minnesota corporation with corporate headquarters located in Brainerd, Minnesota. Radco maintains an office and does business in Sioux Falls, South Dakota.

16. Radco is a "covered employer" under the FLSA, as that term is defined by the FLSA.

17. Radco employed Plaintiff and similarly situated employees to work for the employer within the meaning of the FLSA.

18. Radco has had substantial control over the working conditions of Plaintiff, at all times relevant to this lawsuit.

19. Radco had substantial control over its policies and practices alleged herein, at all times relevant to this lawsuit.

20. Radco controlled Plaintiff's terms and conditions of employment by determining her compensation and work hours.

21. Upon information and belief, Radco's annual gross volume of sales or business done is not less than \$500,000.

FACTUAL ALLEGATIONS

22. All the work that Plaintiff performed or suffered was assigned or permitted by Radco, and Radco was aware or permitted of all the work that Plaintiff performed, or suffered.

23. As part of its regular business practice, Radco intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to the Plaintiff. The policy and pattern or practice includes, but is not limited to:

- (a) Willfully misclassifying Plaintiff as salaried, exempt employee.
- (b) Willfully failing to pay Plaintiff overtime hours for hours she worked in excess of 40 hours per workweek; and
- (c) Willfully failing to record all of the time and hours that Plaintiff worked for the benefit of Radco.

24. Radco is aware or should have been aware that the FLSA required it to pay Plaintiff an overtime premium for hours worked in excess of 40 hours per workweek.

25. Radco's conduct has been widespread, repeated and consistent.

26. Radco is liable under the FLSA for, inter alia, failing to properly compensate Plaintiff for overtime hours worked.

27. Plaintiff has been the victim of a common policy and plan perpetrated by Radco that has violated her rights under the FLSA and caused her to incur monetary damages.

COUNT ONE

Fair Labor Standards Act—Unpaid Overtime

28. Larson repeats and realleges paragraphs 1 through 27 hereof, as if fully set forth herein.

29. The overtime provisions set forth in the FLSA, 29 U.S.C. §§ 201, et. seq., and the supporting federal regulations, apply to Radco as to its obligation to pay proper overtime payments to any non-exempt employee..

30. Larson is properly classified as a non-exempt employee under the FLSA and its implementing regulations.

31. Radco has, for many years, failed to pay Plaintiff proper overtime for hours she worked in excess of 40 hours in a workweek.

32. As a result of Radco's unlawful acts, Plaintiff has been deprived of overtime compensation and other wages in amounts to be determined at trial, and she is entitled to recovery of such amounts, liquidated damages, attorneys' fees, costs, and other compensation pursuant to the FLSA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request judgment as follows:

- (a) Payment of unpaid overtime wages owed and an additional and equal amount as liquidated damages pursuant to 29 U.S.C. §§ 201, et. seq., and the supporting United States Department of Labor regulations;
- (b) Issuance of a declaratory judgment that the practices complained of in this Complaint are unlawful under the FLSA;
- (c) An injunction requiring Radco to pay all statutory required wages, including required overtime pursuant to the FLSA;
- (d) Radco cease and desist its unlawful pay practices and to correct their pay practices going forward;

- (e) Pre- and post-judgment interest;
- (f) Attorneys' fees, expenses and costs of this action;
- (g) Such other relief as this Court deems just and proper.

Dated August 6, 2019.

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

By: /s/ Tracye L. Sherrill
Tracye L. Sherrill
110 North Minnesota Avenue, Suite 400
Sioux Falls, SD 57104-6475
605-332-5999
tsherrill@lynnjackson.com
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully demands trial by jury on all issues so triable.

/s/ Tracye L. Sherrill
Tracye L. Sherrill

19-4136

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

PAMELA LARSON

(b) County of Residence of First Listed Plaintiff Minnehaha
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Tracye L. Sherrill
110 N. Minnesota Ave., Ste. 400
Sioux Falls, SD 57104

DEFENDANTS

MILLS AFTERMARKET ACCESSORIES, INC. d/b/a RADCO TRUCK ACCESSORY CENTER

County of Residence of First Listed Defendant Crow Wing County, MN
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
Teresa M. Thompson

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (Specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
FLSA 29 U.S.C. §§ 201 et. seq.

Brief description of cause:

Employee seeks overtime pay as a properly classified non-exempt employee subject to the FLSA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE